

The Commonwealth of Massachusetts, Department of Mental Health

Searches at Inpatient Facilities

Policy # 98-3

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Approval by Commissioner

Signed by: Marylou Sudders

Date: May 20, 1998

I. Purpose.

The purpose of this policy is to establish standards for the search of patients, patient areas and patient possessions on an inpatient unit or Intensive Residential Treatment Program (IRTP), as well as standards for the inspection of possessions brought onto a unit by a visitor. These standards are adopted for the purpose of protecting the health and safety of patients, staff and visitors. This policy replaces and repeals section 3.07 of the DMH Inpatient Facilities Policy Manual.

II. Scope.

This policy is applicable to all DMH-operated or contracted for Facilities, including all DMH-operated inpatient units at a Department of Public Health hospital and all Intensive Residential Treatment Programs.

This policy only applies to searches conducted for the purpose of finding Contraband.

III. Definitions.

- **Contraband:** Any substance or article that is likely to cause harm to the patient or others, that violates Facility infection control requirements, or otherwise is illegal.
- **Facility:** An inpatient facility, unit or bed for the care and/or treatment of children, adolescents or adults with mental illness, operated or contracted for by the DMH, including all DMH-operated units at a Department of Public Health hospital, and all Intensive Residential Treatment Programs.
- **Facility Director:** The person in charge of a Facility.
- **Invasive Body Search:** A search that may include all of the features of a Non-Invasive Body Search, with the addition of a search of the patient's body cavities and/or orifices.
- **Non-Invasive Body Search:** A search where the patient must partially or totally disrobe; the patient is visually checked; the patient's clothing is searched; but the patient's body cavities and/or orifices are not searched.
- **Pat Search:** The patting of the clothing of a person to determine, by the sense of touch, the presence of Contraband. This is not a full search. In a "Pat Search" the patient remains clothed (except for outer clothing such as bulky jackets, sweatshirts, large boots, etc.).
- **Reasonable Cause:** A combination of facts and circumstances that would warrant a reasonable person to believe that a patient or visitor is holding or hiding Contraband on his or her person or in his or her possessions. Reasonable Cause exists if, in the opinion of the person authorized to approve the search, it is more likely than not that the patient or visitor is in possession of Contraband. Reasonable Cause cannot be merely an opinion or hunch. The person must consider all facts and circumstances known to him or her.
- **Wand or Metal Detector Search:** Involves the use of any electronic device to scan a person for the presence of metal objects.

IV. In General.

Each Facility shall establish procedures for searches of patients and their possessions and patient areas, as well as for the inspection of visitors' possessions, consistent with this policy.

All searches shall be reasonably related to the objective of protecting the health and safety of patients, staff and visitors, while at the same time respecting the importance of the privacy and dignity of the individual who is subject to a search.

Each Facility shall include information on the patient's rights and responsibilities with respect to searches

in the handout describing the patient's human rights given to patients at the time of admission.

Each Facility's procedures shall clearly define the role of all personnel, which may include clinical, administrative, and security personnel, DMH or otherwise, in authorizing and/or conducting searches.

A search must not be more intrusive than is necessary to protect the health and safety of patients, staff and visitors. Less intrusive search procedures that could be used to find the Contraband must be used before more intrusive procedures, to the extent practical. Search procedures must be limited in scope to the specific purpose of the search.

V. Respecting the Dignity of the Patient

A search shall be carried out in a manner that respects the patient's dignity and privacy by:

- respecting the patient's unique history, culture, gender, religious and linguistic needs;
- minimizing the potential for traumatizing or re-traumatizing the patient, especially when the patient has a history of physical or sexual abuse;
- showing respect for a patient's possessions (for example, by returning the patient's possessions to the same place and in the same condition they were in prior to the search);
- respecting the patient's need for modesty and privacy during all searches, especially body searches.

VI. Common Area Searches.

The Facility must have procedures that provide for scheduled and unscheduled searches of common areas in which there is no storage of individual patient possessions. Reasonable Cause is not needed for these searches.

VII. Searches of Bedrooms and Other Areas with Patient Possessions.

The Facility's procedures may provide for searches of patients' bedroom areas, individual storage spaces, and other areas where patients' personal possessions are authorized to be stored. The Facility's procedures shall include the following:

- Authorization: A designation of the appropriate person(s) to authorize a search.
- Reasonable Cause: The person authorizing the search must determine, prior to the search, that there is Reasonable Cause to believe that Contraband is being held or hidden by a patient or patients in his, her or their bedrooms or storage areas.
- Involvement of the patient: Although a Facility does not need a patient's consent in order to conduct a search, every effort shall be made to inform the patient about the reasons for the search and obtain the patient's cooperation. Absent a compelling reason, the patient shall be: (1) told why the search is being conducted; (2) given the opportunity to surrender the suspected Contraband or explain that the suspected Contraband is not in his or her possession; and (3) given the opportunity to be present during the search.
- Notice to the Human Rights Officer: The Human Rights Officer shall be notified of the search. Whenever possible, this notification shall occur prior to the search, so the Human Rights Officer may be present.
- Additional procedures and documentation: Within a reasonable time after a search, Facility staff must process the search with the patient. The person who authorized it must ensure that the reason(s) for and the result(s) of the search are documented in the patient's medical record. Additionally, if the search was conducted without the patient first being told about it, the person who authorized it must ensure that the patient is notified as soon as possible about the search. The patient must be informed as to the reason(s) for, the extent of, and result(s) of the search and the compelling reason(s) for conducting it without prior notice. The compelling reason(s) for conducting the search without prior notice must also be documented in the patient's medical record.

VIII. Pat, Wand and Metal Detector Searches and Searches of Possessions

The Facility procedures shall provide for Pat Searches, Wand and Metal Detector Searches of a patient and for searches of the clothing and other personal belongings carried by the patient (for example, inspection of the patient's jacket, purse and bags) and include provision for training of staff regarding the proper way to conduct a Pat Search and correct use of a wand and metal detector. Pat Searches shall be conducted by clinical staff of the same gender as the patient.

A Facility may have procedures for routine Pat, Wand and Metal Detector Searches of patients and searches of their possessions when patients are being admitted or when patients are returning to the Facility after an unauthorized absence. Reasonable Cause is not needed for these routine Searches.

With respect to Pat, Wand and Metal Detector searches of patients and of possessions being carried by patients at any other times, the Facility's procedures shall include the following:

- Authorization: A designation of the appropriate person(s) to authorize a search.
- Reasonable Cause: The person authorizing the search must determine, prior to the search, that there is Reasonable Cause to believe Contraband is being held or hidden by a patient on his or her person or in his or her possession.
- Involvement of the patient: Although a Facility does not need a patient's consent to conduct a search, every effort shall be made to inform the patient about the reasons for the search and obtain the patient's cooperation. Prior to the search, the patient shall be: (1) told why the search is being conducted; (2) given the opportunity to surrender the suspected Contraband or explain that the suspected Contraband is not in his or her possession; and (3) if a search of his or her possessions, given the opportunity to be present during the search.
- Notice to the Human Rights Officer: The Human Rights Officer shall be notified of the search. Whenever possible, this notification shall occur prior to the search. The Human Rights Officer may be present during the search if requested by the patient.
- Additional procedures and documentation: Within a reasonable time after a search, Facility staff must process the search with the patient. The person who authorized it must ensure that the reason(s) for and the result(s) of the search are documented in the patient's medical record.

IX. Non-Invasive Body Searches.

The Facility's procedures shall provide for a Non-Invasive Body Search of a patient. The Facility's procedures shall include the following:

- Authorization: Only a physician can authorize a Non-Invasive Body Search. In making this determination, the physician must consult with appropriate nursing and/or other appropriate staff at the Facility. Authorization must be in the form of a written order entered in the patient's medical record.
- Reasonable Cause: The physician authorizing the search must determine, prior to the search, that there is Reasonable Cause to believe that Contraband is being held or hidden by the patient on his or her body and that no less invasive search or procedure (for example, a Pat, Wand or Metal Detector Search) can be used to locate the Contraband.
- Involvement of the patient: Although a Facility does not need a patient's consent to conduct a search, every effort shall be made to inform the patient about the reasons for the search and obtain the patient's cooperation. Prior to the search, the patient shall be (1) told why the search is being conducted and (2) given the opportunity to surrender the suspected object or explain that the suspected object is not in his or her possession.
- Conducting the search: A Non-Invasive Body Search shall only be conducted
 - a. in private,
 - b. in the presence of two staff members, who, if possible, and appropriate, are of the gender requested by the patient, and at least one of whom must be a registered nurse.
- Notice to the Human Rights Officer: The Human Rights Officer shall be notified of the search. Whenever possible, this notification shall occur prior to the search. The Human Rights Officer may be present during the search if requested by the patient.
- Additional procedures and documentation: Within a reasonable time after the search, Facility staff must process the search with the patient. The physician who ordered the search must ensure that the reasons for the search, the other staff members who were consulted about the search, the extent of the search, the results of the search, and any comments or reactions elicited from the patient are documented in the patient's medical record. Although Reasonable Cause is required for each search, the need for repeated searches, if any, of a patient, shall be addressed as a treatment planning issue with the patient.

X. Invasive Body Searches.

The Facility shall have procedures that provide for an Invasive Body Search of a patient. The Facility's procedures shall include the following:

- Authorization: Only a physician can authorize an Invasive Body Search. Authorization must be in the form of a written order entered in the Patient's medical record. Before issuing the order, the physician shall consult with appropriate nursing and other staff at the Facility and further shall

consult with the Facility Director, Facility Medical Director and Director of Nursing, if available. If none of them are available, the physician shall consult with the Facility's Administrator On Call. In addition, before issuing the order, the physician shall also consult with the Human Rights Officer, if he or she is available. The physician retains the final authority to issue the order.

- Reasonable Cause: The physician authorizing the search must determine, prior to the search, that there is Reasonable Cause to believe that the patient is concealing Contraband in a body cavity, that an Invasive Body Search is necessary to protect the patient or others from serious harm, and that no less invasive search or procedure may be used to locate the Contraband (e.g., Wand or Metal Detector Search).
- Involvement of the patient: Although a Facility does not need a patient's consent in order to conduct a search, every effort shall be made to inform the patient about the reasons for the search and obtain the patient's cooperation. Prior to the search, the patient shall be: (1) told why the search is being conducted and (2) given the opportunity to surrender the suspected Contraband or explain that the suspected Contraband is not in his or her possession.
- Conducting the search: An Invasive Body Search shall only be conducted
 - a. in private, in a safe, appropriate setting;
 - b. by a physician, nurse practitioner or physician's assistant who is appropriately privileged by the Facility and of the same gender as the patient unless there is a compelling clinical contraindication for this choice;
 - c. in the presence of a second staff person (and, when possible and appropriate, any additional person the patient requests);
 - d. if necessary, by taking the patient to an appropriate health care facility for the search.
- Notice to the Human Rights Officer: The Human Rights Officer shall be notified of the search. Whenever possible, this notification shall occur prior to the search. The Human Rights Officer may be present during the search if requested by the patient.
- Additional procedures and documentation: Within a reasonable time after the search, Facility staff must process the search with the patient. The physician who ordered the search must ensure that the reasons for it, the other staff members who were consulted about the search, the extent of the search, the results, and any comments or reactions elicited from the patient are documented in the patient's medical record. Although Reasonable Cause is required for each search, the need for repeated searches, if any, of a patient, shall be addressed as a treatment planning issue with the patient.

XI. Visitors.

The Facility's procedures shall include a provision for the inspection of possessions brought by visitors to the unit, consistent with the following:

- Staff may request that visitors allow staff to inspect anything being brought onto the unit. If a visitor refuses the request, staff may ask the visitor to leave or staff may monitor the visit.
- In addition, if the staff person in charge of the unit at the time has Reasonable Cause to believe that a visitor is holding or hiding Contraband, staff may request that the visitor's outer clothing (for example, a jacket or coat) be left outside the unit or, if the visitor prefers, that the outer clothing be inspected by staff. If a visitor refuses the request, staff may ask the visitor to leave or staff may monitor the visit.

XII. Disposition of Contraband.

The Facility shall have procedures for disposing of or returning Contraband. They shall include specific instructions regarding the disposition of illegal Contraband. The procedures shall provide for documentation of the confiscation, storage and/or proper disposition of any Contraband, and access to this documentation by the person from whom the Contraband was confiscated.

XIII. Implementation Responsibility.

Implementation of this policy shall be the responsibility of the Facility Director.

XIV. Review.

This policy shall be reviewed annually.